IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13686 of 1994

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BARAIYA RAIJIJI SOMAJI - Petitioner(s)

Versus

GUJARAT WATER RESOURCES DEVELOPMENT CORPN LTD & 1 - Respondent(s)

==========

Appearance :
MR MB GANDHI for Petitioner(s) : 1,
Ms.Harshal Pandya for MR PARESH UPADHYAY for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

==========

CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 03/03/2006

ORAL JUDGMENT

1. This petition has been filed by the petitioner praying for the relief of treating the petitioner as work charge Bore Operator in the pay-scale of Rs.1150-1500 and for taking him on the regular establishment.

2. In brief, the case of the petitioner is that, he was in the service of the respondent Corporation since 1983 as a daily rated employee. The name of the petitioner was included in the list showing those daily wagers who had completed 5 years of continuous service as daily wagers and who were eligible for being granted the work charge status.

3. It is the case of the petitioner that there is a policy of the respondent Corporation to appoint daily rated employees as work charge employees as per seniority, on completion of period of five years of continuous service. Vide order dated 24.05.1990, annexed as ANNEXURE-A to the petition, the Executive Engineer had recommended the names of

certain daily-waged employees who had completed the eligibility criteria of five years continuous service, to the Superintending Engineer of the circle office, for bringing them on the work-charged establishment. The name of the petitioner figured at Sr.No.14 in the list appended to order dated 24.05.1990. In spite of this the petitioner did not receive any intimation, and neither was he appointed on work charge status, whereas the persons junior to the petitioner were put on the work-charge establishment. Petitioner made two representations to the concerned authorities which are on record as Annexure-B dated 28.04.1992 and Annexure-E dated 21.04.1994 to the writ petition. Ultimately, vide letter dated 21.05.1992, annexed as Annexure-D , under the signature of Deputy Executive Engineer, the petitioner was informed that he cannot be appointed on the work charge establishment since he had not completed five years of continuous service as on 01.10.1988. Aggrieved by this decision of the respondent, the petitioner approached this Court for the redressal of his grievances.

4. I have heard Shri M.B.Gandhi, learned counsel for the petitioner and Ms. Harshal Pandya appearing vice Mr.Paresh Upadhyay, learned counsel for the respondent Corporation and have gone through the available material on record.

5. Mr.M.B.Gandhi, learned counsel for the petitioner submits that when the respondent Corporation had included the name of the petitioner in the list of persons to be brought under the work charge establishment vide order dated 24.05.1990, he should have been given the said benefit. Moreover, the petitioner has been working since 1983 and is entitled to be appointed on the work charge establishment and also to be given the pay-scale of Rs.1150-1500. According to him, it is stated in the order dated 24.05.1990 that the power of either altering or cancelling the said order will rest with the Superintending Engineer, therefore, letter dated 21.05.1992, whereby his representation has been rejected, could not have been issued by the Deputy Executive Engineer.

6. In view of the above, it is the case of the petitioner that he has been wrongly denied the benefit of being brought on the work charge establishment and the pay-scale of a regular Bore Operator which he would have got had he been made a work charge employee.

7. *Per-contra,* Ms Harshal Pandya, learned counsel appearing for respondent Corporation has drawn the attention of this Court to Annexure-V appended to the reply filed by the Corporation, which is the Government Resolution dated 17.10.1988. This resolution contains the policy decision of the Government for taking the daily wagers on work charge establishment. According to Ms Harshal Pandya, the order dated 24.05.1990 which the petitioner is relying upon for taking him on the work charge establishment, has been subsequently cancelled by the Executive Engineer vide an order dated 21.02.1991 annexed as Annexure-IV to the reply. Therefore, there is no question of implementing the order dated 24.05.1990 qua the

petitioner. Moreover, another order dated 21.05.1992 annexed as Annexure-D to the petition, was passed to the effect that as per the Government Resolution dated 17.10.1988, popularly known as Shri Dolatbhai Parmar Committee Recommendation, the petitioner has not worked continuously for five years upto 01.10.1988, therefore, he is not entitled to the benefit of being brought upon the work charge establishment. The petitioner has worked for only 4 ½ months in the year 1983 and as per the policy prevailing at that point of time, he could not be taken on the work charge establishment. By an inadvertent mistake, the petitioner was given the benefit of the work charge establishment by including his name in the order dated 24.05.1990, but on realizing the mistake, on subsequent verification, this order was cancelled by the respondent Corporation. Thereafter, the policy of bringing daily wagers on the work charge establishment has been discontinued by the respondent Corporation, since the Government policy dated 17.10.1988 has come into effect. Even as per the Resolution dated 17.10.1988, which contains the

policy of bringing daily wagers on the work charge establishment, the requisite period of continuous service as daily wager is five years and the petitioner did not fulfill the eligibility criteria at that relevant point of time, therefore, he was rightly not given the benefit of being brought on the work charge establishment. It has been vehemently denied that juniors of the petitioner were brought on the work charge establishment prior to the petitioner. In fact, one Shri Vashrambhai Nagjibhai has also been denied the said benefit by the same order dated 21.02.1991, as has the petitioner.

8. It has been submitted by Ms Harshal Pandya that the petitioner has not come to this Court with clean hands since certain material facts have been suppressed. The petitioner has filed a Recovery Application before the Labour Court, Ahmedabad being Recovery Application No.3559 of 1991, a copy of which is annexed as Annexure-I to the reply of the respondent Corporation. The reply filed by the respondent Corporation to this recovery application

is annexed as Annexure-II. The Recovery Application was dismissed by the Labour Court, Ahmedabad on 27.02.1997 and copy of this order is annexed as Annexure-III to the reply of the respondent Corporation. In view of the above, the statement made by the petitioner on affidavit that he has not preferred any other petition on the same subject matter before this Court or before any other court except the present one, is factually incorrect.

9. No other point has been urged by the parties. On a careful consideration of the averments of both the sides and material on record, it is relevant to refer to the representation dated 28.04.1992, filed by the petitioner, to the concerned Superintending Engineer. The petitioner has himself mentioned the periods during which he has worked on daily wages. In the year 1983, he has only worked for about 5 months and 18 days. Thereafter, there is a long break of 11 months. The requisite condition for bringing daily wagers on work charge establishment is that they should have completed five years of continuous service as on 01.10.1988. It is evident

from the record that the petitioner did not fulfil this criteria at that relevant point of time since his service was not continuous, therefore, the benefit of bringing him on work charge status, was not given to him. The action of the respondent corporation in cancelling the order dated 24.05.1990 qua the petitioner, after having discovered that he did not possess the required eligibility criteria, cannot be faulted. The rectification of an inadvertent error cannot be said to be discriminatory or arbitrary, because the respondents are not expected to give appointments to persons who do not possess the prescribed qualifications. This would lead to back door entry of ineligible persons, at the cost of those who are eligible. Even otherwise, no benefit can be derived by the petitioner from any wrong order which may have been passed by the respondent Corporation through inadvertent error, though rectified later.

10. **In AIR 1995 SC 705 titled Chandigarh Administration and another Vs. Jagjit Singh and another**, the Supreme Court has held to the effect

that when the authority concerned has passed a wrong or illegal order, the same must be corrected. Even if not corrected, the authority concerned cannot be compelled to repeat the illegality, nor can the same constitute the basis for a legitimate complaint of discrimination. The relevant extract of Para:8 of this judgment is reproduced as under:

> " Generally Speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the

respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it cannot be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of Law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examined the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the

correctness of the order made or action taken in another person's case, which other persons is not before the case nor is his case. Such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise."

In the light of the principles enumerated hereinabove, the action of the respondent Corporation, of rectifying the inadvertent mistake of inclusion of the petitioner's name in the list of candidates to be brought on the work-charged establishment, even though he did not fulfill the prescribed criteria, is not discriminatory, arbitrary or illegal. The petitioner cannot agitate to get a benefit for which he is not eligible as per prescribed norms.

11. As far as the relief of the petitioner regarding placement in the pay-scale of Rs.1150-1500 is

concerned, that could only have been given had the petitioner been brought on the work charged establishment. It seems that this benefit may have been given to the petitioner for some time and later on, the respondent Corporation, realising the mistake, may have initiated proceedings for recovery of the same, for which, the petitioner preferred Recovery Application No. 3559 of 1991 in the Labour Court, Ahmedabad. This fact has nowhere been stated or disclosed in the writ petition, and it amounts to a suppression of material facts. The relief of pay-scale has been prayed for by the petitioner in the writ petition and any proceeding regarding the same, directly arises from the same subject matter. On the contrary, there is a specific averment on Page-15 of the petition, which is quoted:- **“That the petitioner has not preferred any further petition on the subject matter before this Hon'ble Court before any other Court except the present one.” (Emphasis supplied)**

These averments have been made on affidavit.

This petition, therefore suffers from the

defect of **suppressio veri and suggestio falsi.** A person who suppresses material facts should not come to the court to claim relief and, indeed, does not deserve to be granted such relief.

In JT 2004 (Suppl.2) 601 titled M/s. S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Ors., the Supreme Court has held that " As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken."

The factum of having filed the Recovery Application before the Labour Court is a material one since the decision of the Labour Court upon it, would have had a direct bearing on the case. If the Labour Court would have quashed the recovery, the petitioner would have been entitled to the pay-scale of work-charged

Bore Operator, for which he was not eligible, and this could have been made the basis of any future claim on litigation by him. The petitioner, having suppressed material facts, cannot now claim relief from this Court.

12. Apart from the above, even on merits, the case of the petitioner cannot succeed since he did not fulfil the prescribed period of continuous service for being brought on the work charge establishment as already discussed in detail hereinabove.

13. This petition, is therefore, dismissed as being devoid of any merit. However, it is made clear that the dismissal of the writ petition will not come in the way of the petitioner if, subsequently, he happens to fulfil the eligibility criteria of being brought upon the work-charged establishment. If such a situation arises, the respondents are at liberty to consider the case of the petitioner as per the policy in vogue at the relevant point of time.

14. Rule is discharged. Interim relief, if any granted earlier, stands vacated. No order as to costs.

(ABHILASHA KUMARI, J.)

amit